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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST LITIGATION

Master File No. 3:14-cv-03264-JD

**THIS DOCUMENT RELATES TO
ALL ACTIONS**

**STIPULATION AND [PROPOSED]
ORDER RE: DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION**

1. PURPOSE

This Order will govern discovery of electronically stored information (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

2. COOPERATION

The undersigned parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court's Guidelines for the Discovery of ESI.

1 **3. LIAISON**

2 The parties have identified liaisons to each other who are and will be knowledgeable about and
3 responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to those
4 who are, knowledgeable about the technical aspects of e-discovery, including the location, nature,
5 accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties
6 will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court
7 intervention.

8 **4. PRESERVATION**

9 The parties have discussed their preservation obligations and needs, and agree that potentially
10 relevant ESI has been preserved, and will continue to be preserved, in a reasonable and proportionate
11 manner. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved during
12 the litigation, the parties agree that:

- 13 a) The Defendants named for the first time in the July 18, 2014 Chip-Tech complaint have
14 preserved and will continue to preserve ESI created or received between January 1, 2000 and
15 August 31, 2014, to the extent such ESI existed as of the date the Defendants internally
16 issued litigation hold notices. The Defendants named for the first time in the Plaintiffs'
17 respective consolidated complaints filed November 14, 2014 have preserved and will
18 continue to preserve ESI created or received between January 1, 2000 and December 31,
19 2014, to the extent such ESI existed as of the date Defendants issued litigation hold notices.
- 20 b) Plaintiffs have preserved and will continue to preserve ESI created or received between
21 January 1, 2000 and December 31, 2014, to the extent such ESI existed as of the date
22 Plaintiffs internally issued litigation hold notices.
- 23 c) All parties have preserved and will continue to preserve electronically stored transactional
24 sales data, to the extent it exists, for the period January 1, 1997 through the present.
- 25 d) The parties have exchanged information regarding ESI that is being preserved. The parties
26 have discussed the identification of non-custodial sources of potentially relevant ESI. All
27 parties have advised that litigation holds have been implemented and that all existing
28 relevant company and custodial files are being preserved, including, on a party-by-party

1 basis, providing in individualized meet and confer communications the types, categories and
2 location of ESI that has been preserved.

- 3 e) The parties have conferred about sources of potentially relevant ESI that are not reasonably
4 accessible because of undue burden or cost. To the extent certain parties have identified
5 potentially relevant ESI that is not reasonably accessible, the parties agree that ESI from
6 these sources will be preserved but not searched, reviewed or produced, except as agreed by
7 the parties or upon a showing of good cause and Court order.
- 8 f) The parties have discussed proportionality considerations but, aside from ongoing
9 discussions between Plaintiffs and certain Defendants, no party takes the position that data
10 from any source that may contain relevant information should not be preserved at this time.

11 **5. SEARCH**

- 12 a) The parties have met and conferred about methods to search ESI, and have identified
13 custodians and use of filtering search terms, in order to identify ESI that is potentially
14 responsive to the parties' discovery requests and is subject to production in discovery, and to
15 filter-out ESI that is not subject to discovery. As a result of the parties' meet and confer
16 efforts, they have agreed to a general search term and phrases list to be used to filter
17 Defendants' ESI. The parties will shortly conclude their meeting and conferring over
18 Defendant-specific search terms and phrases and Japanese language translations of all search
19 terms and phrases. The parties' meeting and conferring about Plaintiff-specific search terms
20 and phrases is ongoing.
- 21 b) Should any parties' search results for any agreed-upon search term or phrase from the
22 general list or Defendant-specific lists result in an excessively high hit rate or raise any other
23 party-specific or custodian-specific issues, the parties agree to meet and confer about these
24 issues in an effort to seek a mutually agreeable limitation or variant of the search term or
25 phrase at issue. Should the parties not be able to reach agreement, the parties agree to
26 concurrently submit to the Court their respective discovery dispute letters (no more than
27 two pages in length) promptly after reaching an impasse.

1 **6. PRODUCTION FORMATS**

2 Plaintiffs have requested that Defendants produce ESI in native format. Certain Defendants
3 have informed Plaintiffs that they will not produce their ESI natively, but instead will produce in TIFF
4 format. Plaintiffs take the position that those Defendants producing their ESI in a non-native format
5 have waived their right to seek recovery of the cost of TIFF conversion under 28 U.S.C. § 1920. Those
6 Defendants that choose to produce their ESI in TIFF format assert that they have not waived their right
7 to seek recovery of the cost of TIFF conversion, and expressly reserve their right to do so at the
8 appropriate time. Exhibit A to this Stipulation and [Proposed] Order sets forth the production
9 specifications to which the parties agree regarding native production and, if a party so chooses,
10 production in TIFF format.

11 Regardless of the format of production, the parties agree not to degrade the searchability of
12 documents as part of the document production process.

13 **7. DOCUMENTS PROTECTED FROM DISCOVERY**

- 14 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-
15 protected document, whether inadvertent or otherwise, is not a waiver of privilege or
16 protection from discovery in this case or in any other federal or state proceeding. For
17 example, the mere production of privileged or work-product-protected documents in
18 this case as part of a mass production is not itself a waiver in this case or in any other
19 federal or state proceeding.
- 20 b) The parties have agreed upon a “claw back” procedure and, subject to Court approval,
21 reserve rights to assert privilege as follows:
22 i) If a producing party has a good faith belief that a privileged document has been
23 produced, it shall promptly notify the receiving parties of the claim of privilege.
24 ii) Upon receipt of any notice claiming privilege with respect to a produced
25 document, all other parties (regardless of whether they agree with the producing
26 party’s claim of privilege) shall promptly:

- 1 a. Use reasonable efforts to return, sequester or destroy all copies of the
2 identified documents or material in such party's possession, custody or
3 control, and notify the producing party that they have done so; and
4 b. Use reasonable efforts to retrieve and return, destroy or sequester the
5 identified documents or material from other persons, if any, to whom such
6 documents or material have been provided, and notify the producing party
7 that they have done so.
- 8 iii) To the extent a receiving party disputes the producing party's claim of privilege,
9 the receiving party shall notify the producing party of its position within 14 days
10 of receiving the producing party's notice claiming privilege. Within 14 days of
11 the producing party receiving notification of the dispute, the parties shall meet
12 and confer in an effort to resolve their disagreement. If the parties are unable to
13 resolve their disagreement, the parties may submit the issue to the Court for a
14 determination, and may submit the documents at issue for in camera review.
- 15 c) Privileged communications that post-date the filing of the first complaint in this action
16 need not be placed on a privilege log. Privilege logs shall comply with this Court's
17 Standing Order for Discovery in Civil Cases Before Judge Donato.

8. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

IT IS SO STIPULATED, through Counsel of Record.

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23 Pursuant to Civil L. R. 5-1(i)(3), I attest that concurrence in the filing of this document has been
24 obtained from each of the other signatories above.

25 Date: July 6, 2015

26 By: /s/ Joseph R. Saveri
27 Joseph R. Saveri

28 **IT IS SO ORDERED.**

Date:

Hon. James Donato

EXHIBIT A - PRODUCTION FORMAT REQUESTS

Responsive, non-privileged documents and ESI shall be produced as follows:

A. Production Format

1. Native Productions

Plaintiffs have requested that Defendants produce all documents in native file format. "Native" files refer to electronic files in the same format in which they were originally collected from custodians or other sources. Native format documents may be identified with a Bates stamped slip sheet and be provided a link to the Native file in the load files, or some other reasonably accepted means of identifying the native format documents in discovery productions and for court filings. To the extent that any such native files are used in any pretrial motion or proceeding, those files will be referred to the Bates-number(s) assigned during processing.

2. TIFF Productions

Certain Defendants have indicated that they intend to make their document productions in TIFF format. The standards below pertain to TIFF productions.

a. Image Production Standard

Paper documents will be produced as single page TIFF images with corresponding Concordance and Opticon standard load files, or other agreed-upon format, with accurate document page breaks. ESI produced in TIFF format will follow the same protocol. To the extent practicable, color documents will be produced in color TIFF form, except native image files such as JPG will be produced in JPG format. Each TIFF image will be labeled with a Bates number on the corresponding page. Nothing in this stipulation shall waive a party's right to make documents available for inspection as allowed by the Federal Rules of Civil Procedure.

b. Native Document Production as part of TIFF Productions

Even if a party decides to produce documents in TIFF format, they agree that Excel, Powerpoint, Presentation, Audio Visual and other media files (*e.g.*, .wav, .avi, .mpg, .mov, etc.) shall be produced in native format in the first instance.

1 **c. Extracted Text or Optical Character Recognition (“OCR”) Text for TIFF**
2 **Images**

3 To the extent practicable, each individual document based on an electronic file shall be
4 accompanied by a corresponding text file with text that is extracted from the electronic file, not
5 generated as an OCR file from the .TIFF image(s). These text files will be broken up by document, not
6 by page, meaning each document, regardless of number of pages, will have 1 text file. The production of
7 relevant ESI in searchable, full text format is limited to those forms of ESI that have text (in other
8 words, any non-text formats [*e.g.*, .wav and .jpeg] would not produce any corresponding text files). Each
9 extracted text file will be named according to the first Bates number of the corresponding electronic
10 document.

11 The extracted text shall also conform to the Unicode standard.

12 The Concordance load file will contain a link to the extracted text or OCR text file if applicable.
13 The text should not be included in the Concordance .DAT load file

14 **B. Metadata Fields**

15 The following corresponding metadata fields, to the extent applicable to a produced electronic
16 document, will be included in a searchable fielded data file, regardless of the production format:

- 17 • *Beginning/Ending Document numbers
- 18 • *Beginning/Ending Attachment ranges
- 19 • Document File extension or application
- 20 • Document Source (*e.g.*, department, or file location)
- 21 • Sent Date
- 22 • Sent Time
- 23 • Create Date
- 24 • Create Time
- 25 • Author
- 26 • From
- 27 • Recipient
- 28 • CC
- 29 • BCC
- 30 • Subject (for emails)
- 31 • Title (for files)
- 32 • Custodian
- 33 • File Name
- 34 • Modified Date
- 35 • Modified Time
- 36 • *Full Text (Re-OCR'd text if redactions were made) (including images with searchable text)
- 37 • *Field populated to identify if a document has been redacted (Redacted – “YES”)

1 * If redacted emails and/or documents are produced, only these fields of information will be included in
2 the load file.

3 No party will have any obligation to manually generate information to populate these fields.

4 If TIFF format is used, there are special considerations for certain user-created files such as
5 image files (e.g., TIF, JPG, and GIF files): Image files should be produced as electronically Bates-
6 numbered single-page TIFF images and corresponding metadata. Image files may not contain
7 searchable content available for production, but to the extent available, the searchable content of such
8 image files will be extracted into a fielded database file (metadata fields outlined below) that will also be
9 produced. This metadata file shall also conform to the Unicode standard.

10 **3. Redaction of Images**

11 If the parties redact images on grounds of the attorney-client privilege or attorney work product
12 doctrine, these redactions will be listed on a Privilege Log. In the event a document is redacted, the
13 redaction will be marked by either a box that covers the protected text and/or the term “Redacted.” The
14 extracted text described above will not be delivered for that document and in place of extracted text,
15 OCR output will be delivered based on the redacted images, to the extent reasonably feasible. The
16 parties agree and understand that redaction requires that a document be produced in TIFF format.

17 **4. Foreign Language Documents**

18 The parties agree that the producing party shall not bear the cost of translating foreign language
19 documents produced in this case. The requesting parties shall bear the burden of any costs associated
20 with the translation of foreign language documents.

21 **C. De-Duplication of Productions**

22 The parties will use reasonable, good faith efforts to avoid the production of duplicate
23 documents and ESI.¹

24 The parties shall meet and confer to disclose and discuss the methodology and
25 technologies being employed by each party to de-duplicate review of potentially responsive ESI and

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¹ In general, de-duplication is based on the calculation of a value (e.g., MD5, SHA256) based on the
28 content of each file. These values are then compared across the population and duplicates are removed
from the review and production process as appropriate within each party’s processes.

1 documents in accordance with this Order. The parties may de-duplicate identical ESI vertically (*i.e.*, by
2 custodian) and horizontally (*i.e.*, globally across custodians).

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